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S E C R E T SECTION 01 OF 03 ABUJA 001129

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [KDEM](#) [NI](#) [ELECTIONS](#)

SUBJECT: SUPREME COURT SET TO DECIDE 2003 ELECTIONS CASE  
JULY 1

REF: A. A) 04 ABUJA 2104 AND PREVIOUS

[B. B\)](#) ABUJA 435

Classified By: Ambassador John Campbell for Reasons 1.4 (b) & (d).

[1.](#) (C) SUMMARY: The two-year saga of Nigeria's 2003 elections is due to close its final legal chapter on or about July 1 when the Supreme Court is slated to announce its decision in the case brought by ANPP candidate Buhari against PDP's President Obasanjo over abuse of security forces, lapses in voting procedures and other elements of the severely flawed elections. The public aspect of the Supreme Court was short, but typified the delaying tactics of the Obasanjo's and INEC's attorneys throughout the ordeal. Behind the scenes, pressure on the judiciary and other participants has been strong and continues in anticipation of the ruling. Buhari, who pledged to pursue the court process without public pressure, seems to be warming up his campaign machine even as the pro-Obasanjo camp and other members of government have begun showing their concern over possible outcomes. The concerns are real, as the case presents potential disruptions to the already fragile fabric of the Nigerian state regardless of the decision.

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BACKGROUND  
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[2.](#) (U) The two-year saga of Nigeria's 2003 elections is due to close its final legal chapter on July 1 when the Supreme Court is slated to announce its decision in the case brought by ANPP candidate Muhammadu Buhari against PDP's President Olusegun Obasanjo over abuse of security forces, lapses in voting procedures and other elements of the severely flawed elections. Throughout the trial, Buhari's attorney, Mike Ahamba, presented evidence claiming that Obasanjo and Vice President Atiku Abubakar used governmental authority to disrupt the electoral process and directed now-sacked Inspector General of Police Tafa Balogun to use the Nigeria Police Force to ensure a "PDP victory" (ref A). He also presented a series of election day tabulation sheets that were at odds with those provided late in the trial by the Independent National Electoral Commission (INEC). The case saw INEC refuse to provide official elections results in spite of several court orders.

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THE SUPREME COURT SITS  
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[3.](#) (C) The public aspect of the Supreme Court was short but typified the delaying tactics of the Obasanjo's and INEC's attorneys throughout the ordeal. Both sittings of the Supreme Court took place in a six-story courtroom amid heavy security and a standing-room-only audience of Buhari well-wishers. Buhari's attorney Mike Ahamba (a Christian Igbo) asked that the documents filed be amended to correct a number of typographic errors and then asked to have one of the Appellate Court decisions amended based on the handwritten notes of the Justice that wrote it. The President's attorney Afe Babalola (a Christian Yoruba) and INEC's attorney Joe Gadzama (a Middle Belt Christian) attempted to delay the second sitting through several interventions. Two separate justices, including Chief Justice Mohammad Uwais, admonished them, stating "don't waste our time." Gadzama again argued that "INEC cannot be responsible for" complaints about the party affiliation of Resident Elections Commissioners in each state; "it is up to the President to appoint whomsoever he chooses."

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PRESSURE ON THE COURT  
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[4.](#) (C) Behind the scenes, pressure on the judiciary and other participants has been strong and continues in anticipation of the ruling. According to the Chief Justice of the Supreme Court Mohammad Uwais, attempts have been made to bribe, blackmail, intimidate and threaten him. After a break in at his office (ref B), the pressure turned to threats and he told PolOff that he has been cautious about his public appearances and personal travel. Just before the latest

bribery allegations (septel), he told PolOff that he was "committed" to seeing the process through and had never considered walking away from the challenge. He provided a glimpse into his thought processes with an evaluation of the merits and faults of the two candidates. He characterized Buhari as "honest, hardworking and sincere," and commented that Buhari would eliminate corruption. He criticized Buhari for having an "ineffective campaign organization." "He is too loyal to those who have helped him in the past and is reluctant to dismiss some who are detrimental to his efforts," Uwais said.

15. (C) On the other hand, Uwais said that Obasanjo was "mean, insincere and not trustworthy." "He would turn on anyone for petty personal reasons," he said, and continued that Obasanjo was "increasingly addicted to the office of the Presidency." After complaining that Obasanjo was almost "completely out of touch" with the thoughts and needs of Nigeria, he commented that "at least Obasanjo has appointed some advisers with credentials even if their actions and motives are suspect." Uwais stressed that his analysis was "personal" and that the Supreme Court was not "trying to select Nigeria's next President," but rather deal with the legal and political issues raised in the case. As usual, PolOff did not ask for particulars on the case and Uwais declined to discuss details.

#### ----- BUHARI'S STRATEGY -----

16. (C) Buhari, who pledged to pursue the court process without public pressure, seems to be warming up his campaign machine. After a successful outing in Kaduna in April, Buhari is trying to cement his new relations with politicians in the Southwest. His appearance at a June 12 rally in Lagos (septel) brought together elements of the political structures from the North, the Southwest and the Southeast. According to Embassy contacts, he has been reaching out to his allies throughout the country in recent weeks and is "looking forward to the decision, regardless of the outcome." Buhari told PolOff that he hopes to begin a "thank-you tour" throughout the country shortly after the court decision. His previous attempts holding political meetings have generally been aborted by government officials for "security reasons," but he believes that he can organize political rallies without excessive problems from the government agents.

#### ----- GOVERNMENT ANXIETY -----

17. (C) Dismissive until now, some of Obasanjo's political operatives are discussing the outcome of the case. Still, their belief now, as it was early in the process, is that the "court will uphold the elections in the interest of stability." The fact that they consider the case worthy of discussion is in stark contrast to their attitude in 2003. The stock answer belies a nervousness not evident a year ago, and many comment that they are concerned about the nation's stability even without specific reference to this case. The Vice President and his advisors are also looking into the possibilities of the various outcomes. While most of this camp, too, says that overturning the election is not likely, some admit to contacting Buhari to explore future cooperation against an Obasanjo-Babangida political challenge. Many of these politicians also justify upholding the 2003 elections, not for legal reasons, but because "holding a new election would be impossible to coordinate" within the 90-day constitutionally mandated timeframe.

#### ----- COMMENTS AND SCENARIOS -----

18. (C) The concerns of Nigerians are real as this case presents potential disruptions to the already fragile fabric of the Nigerian state regardless of the decision. The two prime outcomes of the election would be to uphold the elections or to call for new elections within a few months.

#### ----- TO OVERTURN THE ELECTION -----

19. (S) Overturning the elections brings up a cascading series of questions with potentially disruptive outcomes. The first question is whether or not Obasanjo will respect the Court's decision. If he does, then the biggest problem will be how the GON can prepare and run an election within the 90 days required by the Constitution. A secondary issue is whether the elections could be an improvement over the 2003 performance or another stage-managed effort with a scripted outcome. A scripted outcome would leave Nigeria's government with the same credibility problems it faces today.

110. (C) The Obasanjo government has a history of ignoring Court rulings that it finds inconvenient, from revenue issues

with Lagos state to the destruction of homes throughout Abuja, Port Harcourt and elsewhere. Ignoring this one, however, would rock the constitutional structure in ways the others have not because of the magnitude of the issues involved. The legal basis of the regime's six years of governance would certainly be questioned by its critics. It could also be questioned by the military.

11. (S) The military's response to this situation is unpredictable. While it remains reticent to take over on its own and is aware of the international repercussions, some parts of the military appear deeply unhappy with the Obasanjo government. While most accept that "democracy" is the preferred form of government, at least some are discussing whether the current Nigerian government qualifies. A Supreme Court verdict and Obasanjo's noncompliance could force an evaluation of military priorities, i.e., loyalty to the man versus loyalty to the Constitution.

#### TO UPHOLD THE ELECTION

12. (C) Should the Supreme Court uphold the election, several difficulties could arise. First, with the widespread belief (and some admissions) that the elections were rigged, Nigerians are already suspicious of the Presidency and the Legislative branch. Further revelations and confirmation of the flaws of the elections, even contained in minority decisions, can only undermine Obasanjo's already weak acceptance throughout the nation. It could also embolden his challengers both within and without the ruling party. Another eventuality could be the near unanimous assessment by Nigerians that the Court decision was rigged. Nigerians have a low opinion of state and local courts, but the Supreme Court has insulated itself from this bad image through some important (and popular) decisions over the past few years. A widespread belief that the Justices colluded with Obasanjo in reaching a decision could destroy public confidence in the only remaining institution in Nigeria with a positive rating. A government with that level of public antipathy would be unable to tackle difficult reforms and policies and would likely limp along until a change occurred. There is also the open question of how Buhari and Obasanjo's other political rivals will respond to a decision they are likely to find lacking in credibility. In 2003, Buhari kept thuggery largely in check within his own party, and his public behavior during the court case has been exemplary. If he loses the case, it is an open question whether his supporters will continue to operate within the same constraints.

#### IMPLICATIONS

13. (S) The scenarios outlined above all present difficulties for USG policy. If Obasanjo refuses to comply with this court order, as opposed to others he has ignored, the need to choose between the person and rule of law will be less ambiguous than it has been. Intervention by the military in this situation in defense of the Constitution presents a similar choice.

14. (S) If the Supreme Court upholds the obviously flawed elections, the short term outlook might look better, but Nigeria's long term prospects are not improved. With waning confidence in governmental institutions and constitutional authority, instability could continue to mount with the GON unable to resolve the challenges facing the country. While the decision is likely to be a close split, as of June 24, the establishment wisdom is that the court will uphold the 2003 elections. If this proves to be correct, the reactions of General Buhari, General Ojukwu and other opponents of the current government will be key to determining the short term course for the Nigerian state.

CAMPBELL